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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/289,208	04/09/1999	CHARLES A. HOWLAND	W0490/7007/R	8331

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/15/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/289708

Applicant(s)

Howard

Examiner

John Green

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 3, 4, 6-8, 10-22 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3, 4, 6-8, 10-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper N (s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges papers # 22, 23, the RCE and the response of 12/6/2002.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restriction***

17. The Examiner acknowledges the affirmation of claim 16 as withdrawn as directed to the method of making a protective fabric, which is a different invention from the claimed article, protective fabric. Claim 16 is withdrawn as to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

18. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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19. Claims 1, 3, 4, 6-8, 10-15, 17-22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. “At least equal to” as stated in claim 1 as amended does not appear to have clear support in the specification as originally filed. This phrase “at least equal to” does not mean the same as **greater than**, which applicant appears to indicate are equivalent in meaning.

The phrase “at least equal to” is new matter.

20. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

21. Claims 1, 3, 4, 6-8, 10-15, 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, lines 3 and 4, it is not clear what is encompassed by the phrase “at least **some** of said yarns comprise staple fiber” because the specification describes continuous filaments, page 9, lines 27-31, as well as staple fibers on page 10, lines 1-26, but the specification is not clear as to what amount or what percent of the yarns are required to be staple instead of continuous filaments or how much of any combination is required for the claimed invention. It is the Examiner’s position that the staple yarn is not significant for the invention and that the amount would be within the skill of the one of ordinary skill to optimize.

In claim 6, line 5, it is not clear what is encompassed by the phrase “at least **some** of said yarns comprise staple fiber” for the same reason given in claim 1.

***Claim Rejections - 35 USC § 103***

22. Claims 1, 3, 4, 6-8, 10-13, 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunbar 5,579,628.

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Dunbar is maintained substantially as in paper # 9, page 6, paragraph # 23. Applicant's arguments regarding the matchup of the warp and fill yarns has been considered and reviewed, but the arguments are not persuasive because Dunbar does describe the warp is different from the fill. Dunbar describes the warp may be of a different tenacity, modulus, filament number, filament or total denier, (column 7, lines 56-65). Dunbar implies that the warp is different than the fill, i.e. total denier, (column 7, line 63). Contrary to applicant's allegation, there is a difference in the warp and fill yarns as described by Dunbar, (column 7, line 63). Regarding applicant's arguments about densely interwoven yarns, there is no quantification of the densely interwoven yarns in the claims, thus there is nothing in the current claim to distinguish such from the prior art. Contrary to applicant's arguments, there is nothing in the claims regarding the shape of the warp cross section. The Examiner notes applicant's discussion of the figures, but there is no language relating what is shown in the figures to the instant claims. Regarding applicant's arguments that Dunbar is not prior art, it is the Examiner's

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position that Dunbar is prior art because the filing date is 10/13/1992 which qualify for 103 consideration. Regarding the staple fiber, it is the Examiner's position that since no quantification is clearly found in the specification as to amount of this staple fiber and continuous filament, it would be routine in this art for one of ordinary skill to optimize the fibers and their combination, see *In re Boesch*, 617 F.2d 272, 205 USPQ (CCPA 1980). The claimed invention is still found to be obvious to one of ordinary skill in this art when taking the invention as a whole.

24. Claims 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunbar 5,579,628 in view of Harpell 4,403,012

Rejection is maintained substantially as in paper # 9 of 12/3/2001.

Applicant's arguments regarding the coating of the fabric have been considered but they are not persuasive because Harpell '012 describes coated fibers which can be epoxy resins, (column 3, lines 44-68). Harpell '012 describes these epoxy resins can be used in ballistic resistant materials,

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(column 4, lines 15-60). Additionally, with respect to the rejection of Dunbar in view of Harpell '012, it appears applicant mistakenly argues the Harpell '280 reference instead of the applied '012 patent since the '012 patent has no figures. It is the Examiner's position that the claimed invention is still found to be obvious to one of ordinary skill in this art when taking the invention as a whole. Regarding the arguments of Dunbar as prior art see paragraph # 23.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.




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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
John J. Guarriello:gj

Patent Examiner

January 6, 2002

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700